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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,482

04/03/2006

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EXAMINER

CHEN, CATHERYNE

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

01/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,482	Applicant(s) YAHIRO ET AL.	
	Examiner Catheryne Chen	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Amendments filed on Oct. 9, 2007 has been received and entered.

Currently, Claims 1-9, 13-17 are pending. Claims 1-9, 13-17 are examined on the merits.

Response to Arguments

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 4-9, 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsuneo et al. (JP 10-1025247 A, translation provided) with Thomas et al. (US 5972985) providing evidence of inherent characteristics of Tsuneo et al. for the reasons set forth in the previous Office Action. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that references do not teach proanthocyanidine.

Tsuneo et al. teaches a drug that inhibits the growth of *Helicobacter pylori* and is effective for prevention and treatment of gastritis, gastric and duodenal ulcers and the like, where the agent contains hops or its extract, at dose about 1-2000 mg/adult, particularly 10-1000 mg/adult, as a beverage and food for daily ingestion (Abstract). Thomas et al. teaches that proanthocyanidins are flavanols which are present in hops (column 8, lines 34-41). The proanthocyanidins are inherently present in hops and the extract is used to inhibit *Helicobacter Pylori*. Thus, the product and use are the same as those claimed.

Claims 1, 3-7, 9, 13-15, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Mikio et al. (JP 11-180888 A, translation provided) with Ariga et al. (US 5773262) providing evidence of inherent characteristics of Mikio et al. for the reasons set forth in the previous Office Action. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that references do not teach polyphenols.

Mikio et al. teaches compound against *Helicobacter pylori* by blending a fruit polyphenol containing fruit juice, such as apple polyphenols and the like, in solution adjuvant to be pharmaceutically manufactured. Ariga et al. teaches that proanthocyanidins are extracted from apples (column 1, lines 68-61). Apples contain proanthocyanidin and proanthocyanidin is a type of polyphenol. Mikio et al. teaches using apple polyphenol against *Helicobacter pylori*. Furthermore, Mikio et al. does teach procyanidin (paragraph 0018). The chemicals are the same because the effects are the same as claimed.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-7, 9, 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikio et al. (JP 11-180888 A, translation provided) for the reasons set forth in the previous Office Action. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the amounts used for antimicrobial properties may not be the same amounts needed to neutralize a toxin.

The Applicant did not claim a specific concentration, only "an effective amount." Thus, any concentration that Mikio et al. teaches that is used against *Helicobacter pylori* in effect has toxin neutralizing effects by killing the bacteria. Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen,
Ph.D., Esq.
Patent Examiner
Art Unit 1655

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/Susan Hoffman/
Primary Examiner, Art Unit 1655
December 20, 2007